

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

April 22, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0001

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**BUNNY K. BOOKER, TUESDAY A. BOOKER,
A MINOR, AND THURSDAY A. BOOKER, A MINOR,
BY THEIR GUARDIAN AD LITEM,
JAMES W. MCCANN,**

PLAINTIFFS,

V.

**BUDGET RENT-A-CAR SYSTEM, INC. AND
CIGNA INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS,

STANLEY L. KING,

DEFENDANT,

**CLASSIFIED INSURANCE CORPORATION
OF WISCONSIN,**

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee
County: GEORGE A. BURNS, JR., Reserve Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Classified Insurance Corporation of Wisconsin (Classified) appeals from a grant of summary judgment dismissing its cross-claims against Budget Rent-A-Car System, Inc. (Budget) and Cigna Insurance Company (Cigna) for contribution/indemnification. Classified claims that the trial court erred in concluding that neither Budget nor Cigna were required to provide primary uninsured motorist coverage for its insured, Bunny K. Booker. Because neither Budget nor Cigna were required by statute or contract to provide primary coverage, we affirm.

I. BACKGROUND

Booker was injured in an accident when her car was struck from behind by a car driven by Stanley L. King. Booker was driving a car rented from Budget. She did not purchase the supplemental insurance offered at the time she rented the vehicle. Booker's two minor children were passengers and both were injured. King was uninsured. It is undisputed that Classified was Booker's personal automobile carrier and provided her with uninsured motorist (UM) coverage. Classified's UM insurance clause provided that it was excess over any other collectible insurance if the accident occurred while Booker was driving a vehicle that she did not own. Booker sued Budget, Cigna (Budget's insurer), King, and Classified. Classified cross-claimed against Budget and Cigna seeking indemnification or contribution. Classified, Budget, and Cigna all moved for summary judgment. The trial court granted Budget's and Cigna's motions, holding that neither party was required to provide primary uninsured motorist coverage to Booker. Judgment was entered. Classified now appeals.

II. DISCUSSION

Classified contends that it should not be held primarily responsible for uninsured motorist benefits paid to Booker. Instead, Classified suggests that the main responsibility ought to fall on Budget or Cigna or both. Classified based its cross-claim against Budget on the grounds that: (1) Budget's failure to comply with § 344.51, STATS., should require it to provide the primary UM coverage; and (2) the rental agreement between Budget and Booker agreed to provide insurance and/or was a policy of insurance which, pursuant to § 632.32, STATS., must provide UM coverage. Classified's claim against Cigna was based on: (1) the terms of Cigna's excess insurance policy as enforced by the applicable UM statutes; and (2) the fact that Cigna had filed a "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance" with the Wisconsin Department of Transportation. Because the competing parties all moved for summary judgment, it is conceded that there are no issues of material fact in dispute. Thus, we will independently review the record and decide the questions of law. *C.L. v. Olson*, 143 Wis.2d 701, 706, 422 N.W.2d 614, 615 (1988).

A. Budget.

Classified first claims that, as a self-insurer, Budget must provide uninsured motorist coverage to Booker because of its failure to comply with

§ 344.51, STATS.¹ The trial court rejected this argument, relying on *Classified Insurance Company, Inc. v. Budget Rent-A-Car of Wisconsin, Inc.*, 186 Wis.2d 478, 521 N.W.2d 177 (Ct. App. 1994). The trial court ruled:

Nor is Budget required to provide UM coverage by § 344.51, Stats. That section merely requires that Budget have liability insurance “providing protection for third-parties injured through the negligent operation of the rented motor vehicle,” ... Budget did have the required insurance, under a policy issued by Cigna. However, this does not mean that Budget itself must also provide UM coverage. It is only required to provide liability coverage, which it clearly does.

We agree with the trial court’s conclusion.

As part of Chapter 344, § 344.51, STATS., is concerned with Wisconsin’s Financial Responsibility Law. *See* Chapter 344, STATS. The chapter deals exclusively with registered motorists who operate their motor vehicles on

¹ Section 344.51, STATS., provides in pertinent part:

Financial responsibility for domestic rented or leased vehicles. (1) No person may for compensation rent or lease any motor vehicle to be operated by or with the consent of the person renting or leasing the vehicle unless there is filed with the department a good and sufficient bond or policy of insurance issued by an insurer authorized to do an automobile liability insurance or surety business in this state. The bond, policy or certificate shall provide that the insurer which issued it will be liable for damages caused by the negligent operation of the motor vehicle in the amounts set forth in s. 344.01(2)(d). No person complying with this subsection, and no person acquiring an interest in any contract for the rental or leasing of a motor vehicle for which any other person has complied with this subsection, is liable for damages caused by the negligent operation of the motor vehicle by another person.

(2) Any person failing to comply with this section is directly liable for damages caused by the negligence of the person operating such rented or leased vehicle, but such liability may not exceed the limits set forth in s. 344.01(2)(d) with respect to the acceptable limits of liability when furnishing proof of financial responsibility.

Wisconsin roads to ensure that others who are injured by the negligent operation of the vehicles will be compensated for their injuries. Section 344.51 only requires that a vehicle rental company must provide protection for third parties injured by the negligent operation of the rented motor vehicle by the renter. Classified attempts to impute the requirements of § 632.32, STATS., into this chapter to support its argument that Budget should provide UM coverage. We rejected this attempt in *Classified*, see 186 Wis.2d at 483-85, 521 N.W.2d at 179-80, and we do so again here.

Chapter 632, STATS., does not regulate the owners and operators of motor vehicles, “but rather regulates the necessary and permissive provisions found within any policy of insurance issued or delivered in Wisconsin.” *Classified*, 186 Wis.2d at 483, 521 N.W.2d at 179. We conclude that § 632.32(4)(a), STATS., which requires UM coverage for all policies of insurance issued or delivered in Wisconsin is inapplicable to Budget because Budget is not an insurance company and has not issued a policy of insurance. See *Classified*, 186 Wis.2d at 484, 521 N.W.2d at 179 (citing § 600.03(25), STATS. (defining insurance), § 600.03(27), STATS. (defining insurer), and § 600.03(35), STATS. (defining insurance policy)).²

² Classified argues that the instant case is unlike *Classified Insurance Company, Inc. v. Budget Rent-A-Car of Wisconsin, Inc.*, 186 Wis.2d 478, 521 N.W.2d 177 (Ct. App. 1994) where we decided that because the driver of the vehicle was a Budget employee (rather than a renter), § 344.51, STATS., did not impose responsibility upon the rental company to provide UM coverage. *Id.* at 486-87, 521 N.W.2d at 180. The difference, Classified asserts, is that, in the instant case, Budget’s vehicle was driven by a renter. It argues, therefore, that § 344.51 in the instant case should apply and require Budget to provide UM coverage to Booker. We do not accede to the effect of the distinction emphasized by Classified. While it is correct, as pointed out by Classified, that we used this distinction of an employee-operator versus a renter-operator as part of our rationale to deny the application of § 344.51, this distinction was not the overriding reason for our decision. See *id.*, 186 Wis.2d at 483-84, 521 N.W.2d at 179.

(continued)

Next, Classified argues that the rental agreement between Budget and Booker requires Budget to provide all insurance consistent with a standard liability policy in this state and/or that the rental agreement itself constitutes an insurance policy and therefore is statutorily required to provide UM coverage. The trial court rejected these arguments. We do so as well.

The rental agreement states in pertinent part:

LIABILITY INSURANCE: IF THERE IS NO VIOLATION OF ANY OF THE USE RESTRICTIONS IN PARAGRAPH 5 ABOVE, Renter and any Authorized Driver shall, while operating the Vehicle, be provided with liability coverage in accordance with the standard provisions of a Basic Automobile Liability Insurance Policy or in accordance with the requirements of a qualified self-insurer *instead of such coverage*, for protection against liability for causing bodily injury (including death) and property damage with one of the following applicable coverage limits.

(Emphasis added). Referring to this paragraph, Classified argues that the agreement “clearly establishes that Budget agreed to provide coverage either by procuring a liability insurance policy or through self-insurance, that comports with the ‘standard provisions of a Basic Automobile Liability Insurance Policy.’” It

The main premise for our conclusion that Budget was not required to provide UM coverage in *Classified*, was the different purposes attached to Chapter 632 and Chapter 344. *Id.* Whether the driver of the vehicle is a renter or an employee, § 344.51, STATS., still only requires a self-insured vehicle rental company to provide liability insurance so that anyone injured by the negligence of rental car drivers will have a remedy. Because this reasoning equally applies to the facts in the instant case, we reject Classified’s attempt to distinguish the instant case from *Classified*.

Classified also cites *Germanotta v. National Indemnity Co.*, 119 Wis.2d 293, 349 N.W.2d 733 (Ct. App. 1984) in support of its argument. This case, however, provides no support for Classified’s position for two reasons: (1) it addressed the liability of the lessor’s insurer under § 344.51, STATS., to a person injured by the negligent operation of a rented motor vehicle by a renter; and (2) *Germanotta* does not involve a claim for uninsured motorist coverage. Rather, the claim was for injuries the driver of the rented vehicle caused to a third party.

reasons that because § 632.32, STATS., requires that uninsured motorist coverage be provided in a Basic Automobile Liability Insurance Policy, Budget, in effect, agreed to provide coverage that complies with § 632.32.³ We are not persuaded.

Contrary to Classified's claim, a reasonable reading of this paragraph of the rental agreement calls for no other conclusion but that this proviso is worded in the alternative. In unequivocal language, Budget is required to provide liability coverage in accord with the standard provisions of a Basic Automobile Liability Insurance Policy *OR* in accord with the requirements of a qualified self-insurer instead of such coverage. Budget has chosen the latter alternative. Budget has fulfilled the requirements of a self-insurer pursuant to § 344.16, STATS. Accordingly, Budget was able, and would continue to be able, to pay judgments obtained against itself. The ability to pay judgments obtained

³ Section 632.32, STATS., provides in pertinent part:

Provisions of motor vehicle insurance policies. (1) SCOPE. Except as otherwise provided, this section applies to every policy of insurance issued or delivered in this state against the insured's liability for loss or damage resulting from accident caused by any motor vehicle, whether the loss or damage is to property or to a person.

....

(4) REQUIRED UNINSURED MOTORIST AND MEDICAL PAYMENTS COVERAGES. Every policy of insurance subject to this section that insures with respect to any motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall contain therein or supplemental thereto provisions approved by the commissioner:

(a) *Uninsured motorist.* 1. For the protection of persons injured who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom, in limits of at least \$25,000 per person and \$50,000 per accident.

against oneself, however, has nothing to do with uninsured motorist protection. Budget, therefore, is not subject to the uninsured motorist requirements of § 632.32(4)(a), STATS., Classified's protestations notwithstanding.

Finally, Classified asserts in the alternative that the rental agreement is actually an insurance policy and, as such, is subject to the statutory requirement of § 632.32(4)(a), STATS., mandating that every policy of insurance contain UM coverage. The trial court rejected this claim, ruling that the rental agreement between Budget and Booker was not an insurance policy within the meaning of § 632.32(1), STATS. We agree.

We have previously concluded that Budget is not an insurance company and has not issued a policy of insurance. *See Classified*, 186 Wis.2d at 484, 521 N.W.2d at 179. Our conclusions remain unchanged.

B. Cigna

Classified next claims that Cigna must bear the primary responsibility for any uninsured motorist benefits paid to Booker. This obligation, argues Classified, is warranted by the terms of Cigna's commercial excess policy with Budget or by virtue of its uniform motor carrier bodily injury and property damage liability certificate of insurance filed with the State of Wisconsin.

We first examine the excess policy. The policy itself was issued by Cigna in Philadelphia, Pennsylvania, and delivered in Chicago, Illinois,⁴ and is

⁴ The trial court described the scope of Wisconsin's omnibus motor vehicle insurance law as: "Except as otherwise provided, this section applies to every policy of insurance issued or delivered in this state against the insured's liability for loss or damage resulting from accident caused by any motor vehicle, whether the loss or damage is to property or to a person," and concluded that the answer to whether Cigna is required to provide uninsured motorist coverage was to be determined by Illinois law.

therefore governed by Illinois law.⁵ It is uncontested that the policy contains an uninsured motorist coverage clause and also embraces two endorsements pertinent to the disposition of this appeal.⁶ The relevant statutory requirement for uninsured motorist coverage of the Illinois Insurance Code is § 143(a); 25 ILCS 5/143(a) and recites:

Sec. 143(a). (1) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle that is designed for use on public highways and that is either required to be registered in this State or is principally garaged in this State shall be renewed, delivered, or issued for delivery in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in Section 7-203 of the Illinois Vehicle Code for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of

⁵ Classified does not dispute the application of Illinois law to the Cigna policy. It also argues, however, that Pennsylvania law applies as well. A thorough check of the record reveals that this argument was not advanced in the trial court; ergo we shall not consider it. *See Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980).

⁶ Endorsement 3 states:

It is agreed that the persons or entities insured section of this policy is amended as follows: Coverage provided by this policy does not apply to any “Renter” or “Lessee.”

(Original in all caps).

Endorsement 9 states:

It is agreed that Endorsement No. 3 is amended so that this policy provides coverage for a “renter” who has initialed acceptance for the purchase of supplemental liability insurance (SLI) in the Budget “Rent-A-Car Rental Agreement”. This insurance provided to the “renter” will be primary to any other insurance available to the “renter” except with respect to liability coverage provided by Insurance Company of North America Policy No. ISA 002038 and ISA 002039.

(Original in all caps).

uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom.

(Emphasis added). Reading the two endorsements together, if a “renter” desires coverage under the Cigna policy, it is necessary to purchase the supplemental liability insurance via the Budget rental agreement in order to be considered an insured person. Absent such assent, the “renter” does not have to be provided uninsured motorist coverage as per the calls of the above cited § 143(a). *Pellegrini v. Jankoveck*, 614 N.E.2d 319, 322 (Ill. Ct. App. 1993) (holding that it is only after the parties designate the insureds that the uninsured motorist statute applies to prohibit the denial of uninsured motorist coverage to an insured). Because Booker is not insured for liability purposes under the Cigna policy, the Illinois uninsured motorist statute does not apply and Cigna is not responsible to provide coverage to Booker.

The second part of this claim of trial court error concerns whether a Uniform Motor Carrier Bodily Injury and Property Liability Certificate filed by Cigna on October 1, 1988, with the Wisconsin Department of Transportation requires it to provide uninsured motorist coverage to Booker. The certificate in question declares that Cigna has issued to Budget a policy or policies of insurance providing “automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.”⁷ Using the wording of this

⁷ Budget argues that this issue ought not be addressed either because it was not raised at the trial court level or it was inadequately explored. Our review of the record discloses that Classified did raise the issue in a letter response solicited by the trial court after hearing arguments on the summary judgment motions.

certificate, Classified argues that because Wisconsin law requires uninsured motorist coverage to be a part of the policy, *see* § 632.32(4)(a), STATS., Cigna must provide primary uninsured motorist coverage to satisfy Booker's claims. Again, we are not persuaded.

As discussed above, Booker did not purchase the insurance offered by Cigna. Accordingly, she is not an insured under the policy and the fact that a certificate of insurance was filed with the Wisconsin Department of Transportation is irrelevant. Thus, Cigna does not have a obligation to provide primary UM coverage to Booker.⁸

⁸ We also reject Classified's argument that § 632.32, STATS., applies to Cigna. This section only applies to "every policy of insurance issued or delivered in this state." It is undisputed that Cigna's policy was issued in Pennsylvania and delivered to Budget's corporate office in Illinois. Accordingly, § 632.32 does not apply to Cigna's insurance policy.

III. CONCLUSION

In sum, we conclude that neither Budget nor Cigna are responsible for providing Booker with UM coverage. Accordingly, we affirm the summary judgment granted by the trial court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

